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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-135954-13

Date:

February 28, 2014

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

DRE 1 =

DRE 2 =

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2

DRE 3 =

DRE 4 =

DRE 5 =

Company A =

Distributing Series =
A-1 Stock

Distributing Series =
A-2 Stock

Distributing Series =
A-3 Stock

Distributing Series =
A-4 Stock

Distributing Series =
B-1 Stock

Distributing Series =
B-2 Stock

Distributing Series =
B-3 Stock

Distributing Series =
B-4 Stock

Controlled Series =
A Stock

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3

Controlled Series =
B Stock

Distributing =
Business

Controlled =
Business

Group 1 =

Group 2 =

Recapitalization 1 =

Recapitalization 2 =

Rights Offering =

Transition Services =

Transition Period =

State =

a =

b =

c =

d =

e =

f =

g =

h =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to your August 15, 2013 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this ruling letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Spin-off (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations (the "Regulations"); (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both

(see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing has outstanding a series of publicly-traded common stock: (i) the Distributing Series A-1 Stock and the Distributing Series B-1 Stock (together, the “Distributing Series 1 Stock”), which reflect the economic performance of its Group 1 activities, and (ii) the Distributing Series A-2 Stock and the Distributing Series B-2 Stock (together, the “Distributing Series 2 Stock”), which reflect the economic performance of its Group 2 activities.

Distributing, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Distributing SAG”), is engaged in various business activities, including the Distributing Business and the Controlled Business. Following the Spin-off, the Distributing SAG will continue to conduct the Distributing Business, and Controlled, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled SAG”), will conduct the Controlled Business.

Distributing wholly owns DRE 1. DRE 1 wholly owns Controlled, DRE 2, DRE 3 and DRE 4. DRE 2 wholly owns Sub 1. DRE 3 wholly owns Sub 2. DRE 4 owns b% of the Company A stock representing c% of the voting power (with respect to the election of directors) of the Company A stock. Controlled will wholly own DRE 5 after its formation. Each of DRE 1 through DRE 4 is, and DRE 5 will be upon its formation, an entity disregarded as separate from its owner under § 301.7701-3. All of the entities described above are domestic.

Financial information has been submitted which indicates that each of the Distributing Business and the Controlled Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

In transactions unrelated to the Proposed Transactions (as defined below), Distributing effected Recapitalization 1 on Date 1 and Recapitalization 2 (together with Recapitalization 1, the “Recapitalizations”) on Date 2, which included a related Rights Offering. Distributing believes that each of the Recapitalizations qualified as a reorganization under § 368(a)(1)(E).

Management of Distributing believes that the Spin-off will help achieve the following corporate business purposes: (i) to increase the aggregate trading price of the stock of Distributing and Controlled, when compared with the stock of Distributing

without the Spin-off, which is expected to provide Controlled with a significantly more attractive acquisition currency and enable Distributing and Controlled to more efficiently and effectively compensate their officers and employees, and (ii) to facilitate a combination of Controlled and Company A (collectively, the “Corporate Business Purposes”).

The Proposed Transactions

To effect the Spin-off, Distributing has proposed the following series of related transactions (collectively, the “Proposed Transactions”):

- (i) DRE 1 formed Controlled on Date 3, and Controlled changed its name to its current name on Date 4. Controlled currently has outstanding a single class of common stock.
- (ii) DRE 3 will distribute its entire interest in Sub 2 to DRE 1.
- (iii) Distributing’s entire interest in Sub 2 (held indirectly through DRE 1) will be reattributed from Group 1 to Group 2 and cash equal to the fair market value of such interest will be reattributed from Group 2 to Group 1.
- (iv) DRE 4 will distribute its entire interest in Company A to DRE 1.
- (v) All intercompany payables and receivables existing between DRE 1 and Sub 2 will be netted, and DRE 1 will cause (i) the full amount of any net intercompany receivables due to DRE 1 from Sub 2 to be contributed to the capital of Sub 2, and (ii) the full amount of any net intercompany receivables due to Sub 2 from DRE 1 either to be paid by DRE 1 or to be distributed by Sub 2 to DRE 1, after which it will be immediately extinguished.
- (vi) DRE 1 will contribute its entire interest in Sub 2 and Company A, cash, and certain agreements and other assets generally related to Sub 2 or Company A to Controlled in exchange for (i) the assumption by Controlled of certain liabilities (the “Assumed Liabilities”), (ii) the Distributed Loan Proceeds (as defined below), and (iii) stock constructively issued by Controlled (collectively, the “Contribution”).
- (vii) DRE 1 will distribute all of the outstanding stock of Controlled to Distributing.
- (viii) Controlled will form DRE 5 under State law and contribute all of the shares of Company A that it receives in the Contribution to DRE 5. DRE 5 may be formed earlier in the sequence of steps comprising the Proposed Transactions.

- (ix) DRE 5 will borrow d in cash pursuant to a loan (the “Loan”) from one or more third parties and distribute the proceeds of the Loan (the “Loan Proceeds”) to Controlled.
- (x) Controlled will distribute all but e of the Loan Proceeds to Distributing (the “Distributed Loan Proceeds”).
- (xi) In a transaction that Distributing believes will qualify as a reorganization under § 368(a)(1)(E), Controlled will (i) file an amended and restated certificate of incorporation pursuant to which Controlled’s outstanding common stock will be recapitalized into Controlled Series A Stock and Controlled Series B Stock and (ii) issue to Distributing the number of shares of each series necessary to effect the Spin-off (as defined below).
- (xii) Distributing will distribute on a pro rata basis (i) all of the Controlled Series A Stock to the holders of Distributing Series A-2 Stock, and (ii) all of the Controlled Series B Stock to the holders of Distributing Series B-2 Stock (collectively, the “Spin-off”).
- (xiii) In a transaction that Distributing believes will qualify as a reorganization under § 368(a)(1)(E), Distributing may reclassify its outstanding stock by filing an amended and restated certificate of incorporation pursuant to which (i) each share of Distributing Series A-1 Stock will be exchanged for one share of Distributing Series A-3 Stock and a fraction of a share of Distributing Series A-4 Stock, (ii) each share of Distributing Series B-1 Stock will be exchanged for one share of Distributing Series B-3 Stock and a fraction of a share of Distributing Series B-4 Stock, and (iii) each share of Distributing Series 2 Stock will be modified in certain respects (collectively, the “Reclassification”). This step (xiii), if effected, may occur earlier in the sequence of steps comprising the Proposed Transactions.
- (xiv) Within f months following the Spin-off and pursuant to the plan of reorganization, Distributing will use all of the Distributed Loan Proceeds to repurchase shares of Distributing stock pursuant to Distributing’s share repurchase program. Such repurchases will be made pursuant to a special authorization by the Distributing board of directors. The Distributed Loan Proceeds will be held in a separate bank account until distributed by Distributing pursuant to this step (xiv).

In connection with the Spin-off, Distributing and Controlled, or certain of their respective subsidiaries, will enter into agreements to provide for (i) Transition Services during the Transition Period (the “Services Agreement”), and (ii) the allocation of tax liabilities and related tax matters. Distributing and Controlled will also enter into a reorganization agreement to implement the principal corporate transactions required to effect the Spin-off and related restructuring transactions (together with the agreements

described in the preceding sentence, the “Transition Agreements”). The Transition Agreements will include certain indemnification provisions that may require Distributing and Controlled (and/or their respective subsidiaries) to make indemnity payments to each other following the Spin-off (any such payments, the “Indemnity Payments”).

As part of the transitional arrangements entered into in connection with the Spin-off, DRE 1 will provide a contingent line of credit to Controlled pursuant to which Controlled would have the right, contingent upon the occurrence of certain events under the Loan, to borrow up to an aggregate principal amount of g from DRE 1 (the “DRE 1 Credit Arrangement”). The DRE 1 Credit Arrangement will have a term of no more than h years following the date of the Spin-off and will have commercially reasonable terms comparable to arm’s length terms negotiated in the open market.

As a result of the Spin-off, each of the compensatory stock options, restricted shares of stock, and stock appreciation rights (together, the “Equity Rights”) with respect to the Distributing Series 2 Stock that are outstanding at the time of the Spin-off will be adjusted or converted in a manner designed to reflect the intrinsic value of such Equity Rights at the time of the Spin-off (collectively, the “Equity Rights Adjustments”).

Representations

The following representations have been made regarding the Contribution and the Spin-off:

1. Any indebtedness owed by Controlled to Distributing after the Spin-off will not constitute stock or securities.
2. No part of the consideration to be distributed by Distributing in the Spin-off will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing, except as contemplated by the Equity Rights Adjustments.
3. No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing.
4. Distributing and Controlled will treat all members of their respective separate affiliated groups, as defined in § 355(b)(3)(B), as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.
5. The five years of financial information submitted on behalf of the Distributing Business conducted by the Distributing SAG is representative of the present business operations of the Distributing Business conducted by the Distributing SAG, and with regard to the Distributing Business, there have been no

- substantial operational changes since the date of the last financial statements submitted.
6. The five years of financial information submitted on behalf of the Controlled Business conducted by the Distributing SAG is representative of the present business operations of the Controlled Business conducted by the Distributing SAG, and with regard to the Controlled Business, there have been no substantial operational changes since the date of the last financial statements submitted.
 7. The Distributing SAG neither acquired the Distributing Business nor acquired control of an entity conducting the Distributing Business during the five-year period ending on the date of the Spin-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
 8. The Distributing SAG neither acquired the Controlled Business nor acquired control of an entity conducting the Controlled Business during the five-year period ending on the date of the Spin-off in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
 9. Following the Spin-off, except as contemplated by the Services Agreement, the Distributing SAG and the Controlled SAG will each continue the active conduct of its business, independently and with its separate employees.
 10. The Spin-off is being carried out for the Corporate Business Purposes. The Spin-off is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.
 11. The Spin-off is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
 12. The total adjusted bases and the fair market value of the assets transferred to Controlled in the Contribution exceeds the sum of (i) the amount of liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the Contribution.
 13. Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

14. No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Spin-off, except for payables arising under the Transition Agreements, any indebtedness potentially arising under the DRE 1 Credit Arrangement, or indebtedness otherwise arising in the ordinary course of business.
15. Immediately before the Spin-off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Spin-off.
16. Except for any Indemnity Payments, payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
17. No two parties to the Contribution and the Spin-off will be an investment company as defined in § 368(a)(2)(F)(iii) and (iv).
18. For purposes of § 355(d), immediately after the Spin-off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Spin-off. This representation is based on the determination that none of Distributing's shareholders will be aggregated under § 355(d)(7)(B) as a result of Recapitalization 1, Recapitalization 2, or the Rights Offering.
19. For purposes of § 355(d), immediately after the Spin-off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Spin-off or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Spin-off. This representation is based on the determination that none of Distributing's or Controlled's shareholders will be aggregated under § 355(d)(7)(B) as a result of Recapitalization 1, Recapitalization 2, or the Rights Offering.

20. The Spin-off is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
21. Immediately after the Spin-off, either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Spin-off, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
22. Distributing, Controlled and the shareholders of Distributing will pay their respective expenses, if any, incurred in connection with the Contribution and the Spin-off.
23. The distribution of Controlled stock to Distributing's shareholders in the Spin-off is with respect to their ownership of Distributing stock.
24. Any money, property, or stock contributed by Distributing to Controlled in the Contribution will be exchanged solely for stock or securities in Controlled, the Assumed Liabilities and the Distributed Loan Proceeds.
25. The Distributing Series A-1 Stock, the Distributing Series B-1 Stock, the Distributing Series A-2 Stock, and the Distributing Series B-2 Stock constitute stock of Distributing for U.S. federal income tax purposes.
26. Following the Reclassification (if effected), the Distributing Series A-2 Stock, the Distributing Series B-2 Stock, the Distributing Series A-3 Stock, the Distributing Series B-3 Stock, the Distributing Series A-4 Stock, and the Distributing Series B-4 Stock will constitute stock of Distributing for U.S. federal income tax purposes.

Rulings

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled stock to Distributing's shareholders in the Spin-off is with respect to their ownership of Distributing stock, (ii) any money, property, or stock contributed by Distributing to Controlled in the Contribution is exchanged solely for stock or securities in Controlled, the Assumed Liabilities and the Distributed Loan Proceeds, and (iii) any other transfer of stock, money, or property between Distributing, Controlled, or any Distributing shareholder and any person related to Distributing, Controlled, or any Distributing shareholder (other than repurchases by Distributing of shares of Distributing stock with the Distributed Loan Proceeds pursuant

to the Proposed Transactions) is respected as a separate transaction, we rule as follows regarding the Contribution and the Spin-off:

- (1) The Contribution, followed by the Spin-off, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution (§§ 361(a) and (b)(1)(A) and 357(a)).
- (3) Controlled will not recognize any gain or loss on the Contribution (§ 1032(a)).
- (4) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of such asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (5) Controlled’s holding period in each asset received from Distributing in the Contribution will include the holding period during which Distributing held such asset (§ 1223(2)).
- (6) Distributing will not recognize any gain or loss on the Spin-off (§ 361(c)).
- (7) The holders of Distributing Series 2 Stock will not recognize any gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled stock in the Spin-off (§ 355(a)(1)).
- (8) Each Distributing shareholder’s basis in the Distributing Series 2 Stock and the Controlled stock following the Spin-off will equal the basis of the Distributing Series 2 Stock that the shareholder held immediately before the Spin-off, allocated between the Distributing Series 2 Stock and the Controlled stock in proportion to their respective fair market values in accordance with § 1.358-2(a)(2) (§ 358(a)-(c)).
- (9) Each Distributing shareholder’s holding period in the Controlled stock received in the Spin-off will include the holding period of the Distributing Series 2 Stock with respect to which the distribution is made, provided that the shareholder holds such Distributing Series 2 Stock as a capital asset on the date of the Spin-off (§ 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10 and 1.1502-33.
- (11) Any Indemnity Payments made by Distributing to Controlled, or vice versa, that (i) have arisen or will arise for a taxable period ending on or before the Spin-off or for a taxable period beginning on or before and ending after the Spin-off and (ii) will not have become fixed and ascertainable until after the

Spin-off will be treated as occurring immediately before the Spin-off (see *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).

- (12) Following the Spin-off, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated U.S. federal income tax return with Controlled as the common parent.

Caveats

No opinion is expressed about the federal income tax treatment of the Proposed Transactions under other provisions of the Code and Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Spin-off satisfies the business purpose requirement of § 1.355-2(b),
- (ii) Whether the Spin-off is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)),
- (iii) Whether the Spin-off is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7),
- (iv) The federal income tax consequences of the Equity Rights Adjustments, and
- (v) Except as otherwise necessary to the rulings herein, the federal income tax consequences of steps (ii) through (v), (vii) through (ix), (xi) and (xiii).

Procedural Matters

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of this letter.

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 02
Office of the Associate Chief Counsel
(Corporate)